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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,421	10/14/2004	Joseph Paternoster	298.41	4654

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EXAMINER	
ROANE, AARON F	

ART UNIT	PAPER NUMBER
3739	

MAIL DATE	DELIVERY MODE
08/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,421	PATERNOSTER, JOSEPH	
	Examiner	Art Unit	
	Aaron Roane	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) *2-4,6,7 and 17-27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5 and 8-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 October 2004* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/24/06,1/9/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☒ Other: *IDS: 8/1/07*.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 1, 5 and 8-16 directed to specie #1 of the invention in the reply filed on 7/19/2007 is acknowledged. The traversal is on the ground(s) that the different species are "mere alternate embodiments of the claimed invention." This is not found persuasive because these "mere alternate embodiments" are mutually exclusive and patentably distinct and the search and examination of all the species/embodiments causes a serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claims 2-4 and 17-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7/19/2007.

Additionally, the examiner withdraws claims 6 and 7, since claim 6 is directly dependant on claim 3 which is withdrawn, and claim 7 is directly dependant on claim 4 which is also withdrawn.

The examiner will search and examine claims 1, 5 and 8-16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 8-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klentrou et al. (2001) (Klentrou I) in view of Avera (USPN 4,865,640).

Regarding claims 1 and 11, Klentrou et al. disclose a method of improving the physical performance of a user through thermoregulation comprising the steps of: (a) applying at least one packet containing a composition of Dri-Water® matter and (b) performing physical exertion, see pages 11-12. Klentrou et al. fail to explicitly recite the composition matter comprising: cellulosic compound ranging from about 1% to about 3% by weight having an average molecular weight ranging between 90,000 and 700,000 represented by the formula: R--O--COOM, in which "M" is a metal substituted for hydrogen on said carboxyl group of the cellulosic compound and "R" is cellulosic chain; a hydrated metallic salt ranging from about 0.1% to about 0.3% by weight; and water ranging from about 97% to about 99% by weight. Avera discloses a moisturizing agent and teaches

The moisturizing substrate of the present invention takes the form of a high viscosity substance which gradually releases water and air when interacting with biological organisms present in the environment of the object receiving the water and air. Although the mechanism of release of water and air is not clearly understood, it is believed that micro-biological organisms such as enzymes, fungi, and/or ferments, are responsible for the time release for water and air of the substrate.

The high viscosity of substrate may be formed by using a basic cellulosic substance, such as natural bark, which may include glucose, units on its molecular cellulosic chain. A cellulosic compound is formed by substituting carboxylic groups on the glucose units of the cellulosic chain through an ether linkage. More specifically, the cellulosic compound may have the formula:

R--O--COOM,

in which "M" is a metal substituted for hydrogen on said carboxyl group of the cellulosic compound, and "R" is a cellulosic chain. "M" may be represented by lithium, sodium, potassium, rubidium and/or cesium. The cellulosic compound shown in the above formula has a very high average molecular weight, on the ranging from 90,000 to 700,00,

see col. 1, line 45 through col. 2 line 2. Additionally, Avera teaches the use of such a moisturizing agent wherein

The jelly-like product then appeared dry to the touch but semi-sold in appearance. It was found that the aerated water portion of the substrate may vary plus or minus 0.5 parts, the R--O--COONa powder portion of the mixture may vary plus or minus 0.4 parts and the hydrated aluminum sulfate portion of the mixture may vary 0.01 parts, without substantially altering the substrate properties. The substrate produced was observed to not melt or deteriorate in boiling water after 30 minutes of boiling the substrate in a container placed in the boiling water. The substrate was insoluble in water. Evaporation at 100.degree. F. in ambient atmospheric conditions was strongly resisted by the substrate produced. The substrate was determined by calculation to be approximately 98% water. The elemental structure was determined to be 0.76% carbon, 10.95% hydrogen, 88.00% oxygen, 0.008% aluminum 0.286% sodium and 0.10% sulfur. The substrate formation was repeated with the addition of inert green food coloring without affecting the moisturizing characteristics of the substrate,

see col. 3, lines 15-53 and claim 1. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Klentrou et al., as taught by Avera, to use a moisturizing agent having the recited chemical properties in order to provide the wearer with a superior moisturizing/hydration ability during exercise.

Regarding claims 8-10, Klentrou et al. in view of Avera disclose the claimed invention as the claimed subject matter is inherently part or an aspect of Dri-water® and/or moisturizing agent.

Regarding claim 12-14, Klentrou et al. in view of Avera disclose the claimed invention, see Avera, col. 2, lines 3-14.

Regarding claim 16, Klentrou et al. in view of Avera inherently disclose the claimed invention as Avera is directed to a moisturizing agent applied to biological tissue.

Claim 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klentrou et al. (2001) (Klentrou I) in view of Avera (USPN 4,865,640) as applied to claim 1 and 11 above, and further in view of Klentrou et al. (May 2002) (Klentrou II).

Regarding claim 5, Klentrou I in view of Avera disclose the claimed invention except for the amount of the thermoregulating composition of matter applied to the user ranges from about 0.2 to about 1 kilogram in weight. Klentrou II disclose thermoregulation method and teach the use of treatment amounts 490 cm^3 and 633 cm^3 in order to effectively thermoregulate a wearer during exercise, see page 5. It should be noted that since the agent is about 97% water by weight, the combination meets the claimed invention. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Klentrou I in view of Avera, as taught by Klentrou II,

to treat the wearer/exerciser with about a half of a kilo of moisturizing/hydrating agent in order to effectively thermoregulate during exercise.

Regarding claim 15, Klentrou I in view of Avera disclose the claimed invention except for the packet is constructed of permeable material. It is extremely well known in the art to place the moisturing/hydrating agent in a permeable sack, packet or pouch when in order to deliver treat the skin and/tissue with a contained agent. Klentrou II. disclose an thermoregulation treatment device and teach providing the device with a moisture permeable sack that contains/encloses the moisturing/hydrating agent the in order to provide the device with a film from which moisture escapes and is delivered to tissue, see page 5 2nd paragraph. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Klentrou I in view of Avera, as taught by Klentrou II, to provide the device the a moisture permeable sack in order for moisture (water) to be delivered to the tissue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aaron Roane
August 3, 2007

A. R.

Roy D. Gibson

ROY D. GIBSON
PRIMARY EXAMINER